



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Cleta Mitchell, Esq.
Foley & Lardner LLP
3000 K Street, NW 6th Floor
Washington, D.C. 20007

APR 19 2016

RE: MUR 6746
Americans in Contact PAC
Gabriel S. Joseph
FreeEats.com, Inc. d/b/a ccAdvertising

Dear Ms. Mitchell:

On August 9, 2013, the Federal Election Commission (the "Commission") notified your clients, Americans in Contact PAC and Gabriel S. Joseph, III, in his official capacity as treasurer and FreeEats.com, Inc. d/b/a ccAdvertising, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

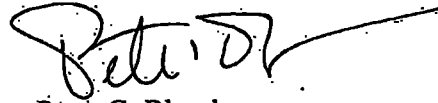
Upon further review of the allegations contained in the complaint, the Commission, on March 15, 2016, voted to exercise its prosecutorial discretion to dismiss the allegations that Americans in Contact PAC and Gabriel S. Joseph, III, in his official capacity as treasurer violated 52 U.S.C. §§ 30118(b) and 30103(b). In addition, the Commission was equally divided as to whether to find reason to believe that Americans in Contact PAC and Gabriel S. Joseph, III, in his official capacity as treasurer violated 52 U.S.C. § 30120(a)(3) or 11 C.F.R. § 110.11(a)(3). Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

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If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg", with a long horizontal flourish extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Americans in Contact PAC and **MUR: 6746**
Gabriel S. Joseph, III in his official capacity as treasurer
Gabriel S. Joseph, III
FreeEats.com, Inc. d/b/a ccAdvertising

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Citizens for Responsibility and Ethics in Washington, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Americans in Contact PAC and Gabriel S. Joseph, III in his official capacity as treasurer ("AICPAC"), Gabriel S. Joseph, III, and FreeEats.com, Inc. d/b/a ccAdvertising.¹

Complainant alleges that AICPAC, which is registered as a nonconnected PAC, is actually the separate segregated fund ("SSF") of FreeEats.com, Inc., d/b/a ccAdvertising ("ccAdvertising"), and thus, most of the \$750,000 that AICPAC raised was from sources outside of its restricted class in violation of 2 U.S.C. § 441b(b)(4)(A)(i) (now 52 U.S.C. § 30118(b)(4)(A)(i)).² Complainant further alleges that Gabriel Joseph, president of ccAdvertising and treasurer of AICPAC, knowingly made a false statement to the Commission when he filed a Statement of Organization claiming that the PAC had no connected organization, in violation of 18 U.S.C. § 1001.³

¹ See 52 U.S.C. § 30109(a)(1).

² Compl. ¶¶ 24-33 (Aug. 5, 2013).

³ *Id.* ¶¶ 32-33. This criminal provision is not within the Commission's jurisdiction and thus the Commission makes no finding regarding this allegation. Instead, the Commission analyzes this allegation pursuant to Section 30103(b) of the Act, which requires political committees to list any connected organization on its Statement of Organization.

1 In a joint response to the complaint, Respondents assert that AICPAC is properly
2 registered as a nonconnected political committee because it has paid its administrative,
3 compliance, and fundraising costs from PAC funds as reflected on its FEC reports.⁴

4 Based upon the Complaint, Response, and available information, the Commission
5 dismisses as a matter of prosecutorial discretion the allegation that Americans in Contact PAC
6 and Gabriel Joseph, III in his official capacity as treasurer is an SSF that violated 52 U.S.C.
7 § 30118(b) by soliciting funds from individuals outside of its restricted class.⁵ Similarly, the
8 Commission dismisses the allegation that Americans in Contact PAC and Gabriel Joseph, III in
9 his official capacity as treasurer knowingly filed an inaccurate Statement of Organization
10 claiming that the PAC had no connected organization.⁶

11 II. FACTUAL AND LEGAL ANALYSIS

12 A. AICPAC's Registration as a Nonconnected Committee

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14 AICPAC has been registered with the FEC as a nonconnected political committee since
15 2008.⁷ Gabriel S. Joseph III established the PAC and is its treasurer and custodian of records.⁸
16 Joseph is also president of ccAdvertising.⁹ ccAdvertising is a communications firm providing

⁴ Resp. at 3, Ex. A, Joseph Aff. ¶¶ 15- 16; Ex. B, Summary of Administrative Costs Paid By Americans in Contact PAC in 2012 (Oct. 17, 2013). Respondents also assert that the complaint misidentified FreeEats.com, Inc., d/b/a ccAdvertising as a respondent in this matter, asserting that ccAdvertising is not operated by FreeEats.com, Inc. but operated by AIC Communications, LLC, which does business as ccAdvertising. *Id.* at 1. In his affidavit, Joseph asserts that FreeEats.com, Inc. is a holding company that owns preferred stock in AIC Communications, LLC, which does business as ccAdvertising. Joseph Aff. ¶¶ 3-4, 8. Joseph is president of AIC Communications, LLC, and FreeEats.com.

⁵ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁶ *Id.* See footnote 3, *supra*.

⁷ See AICPAC, Statement of Organization at 1-3, dated October 1, 2008.

⁸ *Id.*

⁹ Resp. Ex. A, Gabriel S. Joseph III, Aff. ¶ 2-3.

1 telephone surveys, polling, and message delivery services to political and commercial clients and
2 is a commercial vendor to AICPAC.¹⁰

3 The complaint alleges that AICPAC is not a nonconnected committee but is instead an
4 SSF of ccAdvertising.¹¹ Specifically, the Complaint alleges that: 1) Joseph personally
5 administers AICPAC using the resources and facilities of ccAdvertising, citing to AICPAC's
6 access to ccAdvertising proprietary databases, its use of a post office box as its official address,
7 and its payment of rent to a provider of virtual office space; and 2) Joseph, who serves
8 simultaneously as the treasurer of AICPAC and president of ccAdvertising, was solely
9 responsible for establishing AICPAC, and has day-to-day operational control of both
10 organizations.¹²

¹⁰ See <http://www.ccadvertising.com/capabilities.html>

¹¹ Compl. ¶¶ 21-33; 11 C.F.R. §§ 100.5(g)(4)(i), (ii)(A)-(J), 110.3(a)(3)(i) and (ii)(A)-(J), 114.5(g). The Complaint points to the Commission's affiliation regulations in support of its allegation. The affiliation rules, however, apply in the context of two or more political committees and thus would not apply under the facts of this case, which involve a single political committee and corporation. However, the analysis used by the Commission to determine whether a nonconnected PAC is financially and organizationally independent of a corporation is similar to the affiliation rules.

¹² Compl. ¶¶ 21-33. Complainant alleges that "Joseph has gone to elaborate lengths to portray AICPAC as a nonconnected committee, when, in fact, AICPAC is administered by Mr. Joseph using the resources and facilities of ccAdvertising located at Suite 302, 5900 Fort Drive, Centreville, Virginia." *Id.* ¶ 19. The complaint points out that AICPAC uses a post office box as its official address, which allegedly was rented by AICPAC's accounting firm Koch & Hoos, LLC, "at the direction of Mr. Joseph and ccAdvertising in order to make it appear that ccAdvertising was not the connected organization of AICPAC." *Id.* Complainant further alleges that AICPAC's \$200 monthly payments to HQ Global Workplace for rent is designed to make it appear that ccAdvertising is not connected to AICPAC. *Id.* ¶ 20. Complainant notes that HQ Global Workplaces is a division of Regus USA, a provider of virtual office space, and the only service that HQ Global Workplaces provides at the rate of \$200 per month is a telephone answering and forwarding service, which Complainant alleges forwards phone calls to Joseph's offices at ccAdvertising. *Id.* Finally, Complainant points out that AICPAC claims on its website that it has access to proprietary databases of consumer information, but these databases are in fact owned by ccAdvertising. Complainant submitted screenshots of the AICPAC and ccAdvertising websites. *Id.* ¶¶ 17-18. & Ex. L, M. The AICPAC website states that its goal is "to identify the political opinions and preferences of the 120,000,000 homes in America that are contained in proprietary databases to which AICPAC has access" and ccAdvertising's website states that it "maintains an extensive, two-week current database of 120,000,000 homes in America. This database is suitable for mailing lists and phone lists." *Id.*

1-800-4-NAD-4-0001

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1 use of a post office box as its address and its payment of rent to a provider of virtual office
2 space.¹⁶ However, the information currently available does not indicate that AICPAC has used
3 or failed to pay for any access to proprietary databases, resources, or facilities of ccAdvertising.
4 Indeed, AICPAC's FEC disclosure reports show that since its establishment in 2008, it has paid
5 its administrative, compliance, and fundraising costs from its own funds, including payments
6 totaling \$496,659 in expenditures to ccAdvertising for administrative services, IE phone
7 communications, and PAC surveys.¹⁷ In light of the information demonstrating AICPAC's
8 financial independence, we do not believe that it is a prudent use of Commission resources to
9 proceed with this matter.¹⁸ The Commission, therefore, dismisses as a matter of prosecutorial
10 discretion the allegations that Americans in Contact PAC and Gabriel Joseph, III in his official
11 capacity as treasurer violated 52 U.S.C. §§ 30118(b) and 30103(b).

¹⁶ Compl. ¶¶18-20.

¹⁷ A corporation does not provide financial support to a committee when services or the use of facilities is provided in return for payment by the committee of the usual and normal charge within a commercially reasonable time. *See, e.g.*, Advisory Opinion 1991-37 (Democratic Election Reporting Education Fund). *See also* Advisory Op. 1995-38 (concluding that a nonconnected political committee could receive services from a vendor whose chief executive officer also served as treasurer of the committee, so long as the committee paid the usual and normal charges for those services).

¹⁸ *See Heckler v. Chaney*, 470 US 821 (1985).